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Attorney for Non-Party Nintendo of America

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.

Defendants.

Case No. 23-cv-02880-JSC

**DECLARATION OF BENJAMIN P.
ARGYLE IN SUPPORT OF NON-PARTY
NINTENDO OF AMERICA INC.
UNOPPOSED MOTION FOR ORDER
CHANGING TIME**

DECLARATION OF BENJAMIN P. ARGYLE

I, Benjamin P. Argyle, do solemnly declare under penalty of perjury as follows:

1. I am an attorney admitted to and in good standing with the Bar of the State of New York (Bar No. 5300678). I am of Counsel in the law firm Venable LLP, counsel to Non-Party Nintendo of America Inc. (“NOA”). The facts contained herein are true, accurate, and complete to the best of my knowledge, which is based on my personal knowledge and on my review of the case file maintained by my office in connection with this matter.

2. I submit this declaration in support of non-party NOA’s Unopposed Motion for Order Changing Time.

3. I understand that the Federal Trade Commission (“FTC”) has filed in the action captioned above its Complaint for a Temporary Restraining Order and Preliminary Injunction.

4. I understand that both Plaintiff and Defendants intend to file certain documents for this proceeding on the Court’s public docket. Those documents were produced by NOA to the FTC during its investigation review and subsequent Part 3 administrative litigation relating to the proposed acquisition at issue in the above-captioned proceeding. I also understand that NOA produced all of the documents at issue pursuant to FTC confidentiality rules and a protective order.

5. On June 16, 2023, Defendants filed their Memorandum of Law in Opposition to Motion for Preliminary Injunction (“Memorandum”) and accompanying exhibits. (Dkt. No. 108). The Memorandum cites to a Nintendo witness’s deposition that was taken during the course of discovery *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before the FTC Office of Administrative Law Judges, Docket No. 9412, the transcript of which is attached as an exhibit (Dkt. No. 108-43).

6. Defendants did not notify NOA upon filing of their Memorandum as required by the local rules. On June 21, 2023 at 9:07 am ET, after reading the redacted document on the public docket, I requested that Defendants provide notice and the unredacted Memorandum and exhibit so NOA could ascertain its claims for confidentiality.

7. Later that evening at 9:20 pm ET, Defendants provided the requisite notice and unredacted information.

8. NOA currently intends to file its Civil L.R. 79-5(f) statement and/or declaration for all the NOA-related depositions transcripts in their entirety that the parties intend to file on the Court's docket on Tuesday, June 27, 2023.

9. I corresponded with counsel for FTC, and they do not oppose this request.

10. I corresponded with counsel for Defendants, and they consent to this request.

11. This is non-party NOA's first request for an extension of time related to Defendants Memorandum and second overall related to this proceeding. I have no reason to believe that this request will affect any deadline or hearing date in this action.

Executed this 22nd day of June 2023 in New York, New York.

[Signature]

Benjamin P. Argyle